

**REMARKS**

Applicants acknowledge receipt of a Final Office Action dated January 24, 2006. In this response Applicants have added claim 19. Support for these amendments may be found in the Specification, *inter alia*, in the paragraph bridging pages 9 and 10 of the Specification. Entry of these amendments following issuance of a Final Rejection is proper inasmuch as Applicants are submitting this Amendment and Reply together with a Request for Continued Examination. Following entry of these amendments, claims 1-4 and 7-19 are pending in the application.

Reconsideration of the present application is respectfully requested in view of the foregoing amendments and the remarks which follow.

**Formal Drawings**

During a review of their file, Applicants have noted that the PTO has not yet acknowledged acceptance of the formal drawings submitted on July 14, 2003. Applicants respectfully request that the PTO acknowledge acceptance of the drawings in its next communication.

**Information Disclosure Statement**

On page 2 of the Office Action dated April 26, 2005, the PTO stated that the PTO file is missing Citation A2 from the Information Disclosure Statement filed July 14, 2003. Applicants submitted another copy of Citation A2 (JP 8-13902) with their previous response, along with a PTO mailroom receipt (the document was apparently lost within the USPTO). In their previous response, Applicants requested that the USPTO consider the Japanese document and initial and sign the SB/08. Applicants have not yet received an initialed and signed copy of the SB/08. Applicants therefore request that the PTO provide an initialed and signed copy of the SB/08 with its next communication.

**Rejections Under 35 U.S.C. 103**

In the Office Action, the PTO has set forth a number of rejections under 35 U.S.C. §103 which Applicants summarize below:

- On page 2 of the Office Action, the PTO has rejected claims 1-4 and 12-18 as being unpatentable over U.S. Patent 6,591,871 to Smith et al. (hereafter “Smith”) in view of U.S. Patent 6,576,312 to Ito et al. (hereafter “Ito ‘312”).
- On page 5 of the Office Action, the PTO has rejected claims 7-9 as being unpatentable over Smith in view of Ito, as applied to claims 1-4 and 12-18, and further in view of U.S. Patent 6,619,330 to Ito et al. (hereinafter “Ito ‘330”).
- On page 6 of the Office Action, the PTO has rejected claims 10-11 as being unpatentable over Smith in view of Ito, as applied to claims 1-4 and 12-18, and further in view of U.S. Patent 6,589,647 to Ozawa et al. (hereinafter “Ozawa”).

Applicants respectfully traverse these rejections for the reasons set forth below.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants’ disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

With particular regard to claims 1-4 and 7-17, Applicants note that Smith fails to disclose “at least one first cylindrical resin layer (A)” and “at least one second cylindrical resin layer (B)” and “wherein the at least one second cylindrical resin layer (B) is in direct contact with and serves as a supporting layer for the at least one first cylindrical resin layer (A)” as recited in independent claims 1 and 14. The only discussion in Smith regarding the hose 10 and the cover 14 appears at col. 3, lines 44-50 where Smith states that the cover is “adjacent” the outside surface of the outside wall of the hose and at col. 4, lines 15-26 where Smith states that it may be desirable to incorporate a “tie layer” (adhesive) between the hose 10 and the cover 14. The remainder of Smith’s disclosure fails to provide any information regarding the method by which the concentric tubes are made or are assembled together.

In contrast to Smith and with regard to the presently claimed invention, Applicants wish to direct the PTO’s attention to the paragraph bridging pages 9 and 10 of the Specification in which Applicants state that:

The above-mentioned supporting layer (cylindrical resin layer B) contains as the main component or is formed of polybutylene terephthalate (PBT) copolymer and/or polybutylene naphthalate (PBN) copolymer, so that a high miscibility is exhibited at a laminated or contacting section between the supporting layer and the above-mentioned permeation-interrupting layer. Additionally, even only extrusion of both layers provides a sufficient adhesiveness so that an excellent delamination or peel resistance can be obtained in a high temperature atmosphere. Further, since no adhesive layer is required between the supporting layer and the permeation-interrupting layer, the resinous tube can be obtained at a very low cost. Furthermore, in the supporting layer, PBT and/or PBN may be mixed in addition to PBT copolymer and/or PBN copolymer, which is effective for further improving the above-mentioned delamination.

In light of this passage in Applicants' Specification and the language in the claims which states that "the at least one second cylindrical resin layer (B) is in direct contact with and serves as a supporting layer for the at least one first cylindrical resin layer (A)", Applicants submit that Smith's positioning of a cover layer 14 adjacent to hose 10 and Smith's use of an adhesive does not constitute the presently "direct contact" between the "at least one second cylindrical resin layer (B)" and the "at least one first cylindrical resin layer (A)." The additional references, namely Ito '330, Ito '312, and Ozawa, fail to resolve this fundamental deficiency in Smith. For at least this reason, Applicants submit that the rejections of claims 1 and 14 based upon the various combinations of Smith, Ito '312, Ito '330, and Ozawa are improper and ought to be withdrawn.

If an independent claim is nonobvious under §103, then any claim depending therefrom is nonobvious. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP 2143.03. Thus, Applicants submit that claims 2-4 and 7-16 which ultimately depend from either independent claim 1 or independent claim 14, are also non-obvious.

In addition, and with regard to claim 1-4 and 7-18, Applicants note that Smith fails to disclose a resinous tube "wherein the at least one second cylindrical resin layer (B) comprises a block copolymer which comprises at least one segment selected from the group consisting of polybutylene terephthalate (PBT) and polybutylene naphthalate (PBN) as a hard segment, and at least one segment selected from the group consisting of polytetramethylene glycol and

polycaprolactone as a soft segment.” Applicants acknowledge that the PTO has combined Smith with Ito ‘312. Applicants note, however, that there is no motivation or suggestion in either Smith or Ito ‘312 that would lead a person having ordinary skill in the art to modify Smith by replacing Smith’s cover layer 14 with the *innermost* or *intermediate* layer 2a, 2b of Ito ‘312. Accordingly, it appears that this combination was based upon impermissible hindsight, and, on this basis, Applicants submit that the outstanding rejection based upon the combination of Smith and Ito ‘312 should be withdrawn.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections under §103.

### **Double Patenting Rejection**

On page 7 of the Office Action, the PTO has provisionally rejected claims 1-4 and 7-18 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent Application Serial No. 10/980,313 in view of Smith. Applicants will take appropriate action in the event this rejection becomes non-provisional.

### **Newly Added Claim**

In this response, Applicants have added claim 19. Support for these amendments may be found in the specification, *inter alia*, in the paragraph bridging pages 9 and 10 of the Specification.

With regard to claim 19, Applicants note that none of the cited references, taken individually or in proper combination, teach or suggest a resinous tube “produced by a process comprising extruding the at least one first cylindrical resin layer (A) and the at least one second cylindrical resin layer (B) and adhering the at least one first cylindrical resin layer (A) to the at least one second cylindrical resin layer (B) with an adhesive”.


### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicants respectfully submit that all of the pending claims are now in condition for allowance. An early notice to this effect is earnestly solicited. If there are any questions regarding the application, the Examiner is invited to contact the undersigned at the number below.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16 1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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